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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,535	08/24/2001	Lori Tassone Holmes	KCC-16,221	2474

35844 7590 06/14/2006

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EXAMINER	
STEPHENS, JACQUELINE F	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/939,535	HOLMES	
	Examiner	Art Unit	
	Jacqueline F. Stephens	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *5/26/06*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4,6,9-12,14-20,26-33,35-43,57,58,60-63, 65, 68-70,72-77* is/are pending in the application.

4a) Of the above claim(s) *1,2,4,6,9-12,14-20,27-33 and 35-42* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *26,43,57,58,60-63,65,68-70 and 72-77* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/26/06 has been entered.

Response to Arguments

2. Applicant's arguments filed 4/20/06 have been fully considered and they are partially persuasive. In reference to the 102 rejection of claims 26, 57-58. 60-63, and 68 as being anticipated by Everett et al., the arguments are moot in light of the new rejection.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner has

relied on Osborn for a teaching of a segmented absorbent core for the benefit of providing independent segments each able to move in the Z-direction without constraints and allowing the core to conform to the shape of the body of the wearer.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 26, 57-58, 60-63, and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everett et al. WO 99/17695.

As to claim 26, Everett discloses an absorbent material comprising: an upper layer 48 including pulp fluff and superabsorbent material and a lower layer 50 including pulp fluff and superabsorbent material (page 20, line 26 through page 21, line 24); wherein the absorbent material has a thickness in a range of between 0.5 and 7.5 mm (page 13, lines 9-12), and an absorbent capacity between about 14 and 40 grams 0.9 w/v% saline solution per gram of absorbent material (page 23, lines 11-19), and the lower layer has a greater density than the upper layer (page 21, lines 10-24; page 78, line 6-9 and page 80, lines 3-5. Everett discloses the upper layer comprises between 20 and 75wt%, which includes a component of the range of between 10 and 80% superabsorbent (page 78, lines 15-16). Everett does not disclose the upper layer comprising a bottom surface encompassing an entire surface of the upper layer that faces the lower layer, the lower layer having a top surface encompassing an entire surface of the lower layer that faces the bottom surface of the upper layer wherein the bottom surface area of the upper layer is greater than the top surface area of the lower layer. However, it would have been an obvious matter of design choice to provide the upper and lower layers with the claimed dimensions, since such a modification would have involved a mere change in the size of a component. Applicant has not provided criticality in the cited passages page 13, lines 11-15 or page 27, lines 17-20 for a difference in the surface area of the layers. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to the limitations of the upper layer being drum -formed and the lower layer being air laid, these limitations are directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

As to claim 57, Everett discloses an upper layer of density 0.03 gcm^3 - .4 g/cm^3 (page 78, lines 7-8). Everett discloses the lower layer has a density of not less than about 0.1g/cm^3 and not more than about 0.3 g/cm^3 (page 80, lines 3-4).

As to claim 58, Everett discloses the upper layer comprises between 20 and 75wt%, which includes the range of between 20 and 70% superabsorbent (page 78, lines 15-16).

As to claim 60, see page 13, lines 9-12.

As to claim 61, Everett discloses the absorbent material has an absorbent capacity of at least 16 grams w/v% saline solution per gram of absorbent material (page

23, lines 11-19).

As to claim 62, Everett discloses two or more layers (page 25, lines 34-35.

As to claims 63, Everett discloses a plurality of layers on the upper layer (page 79, claim 12).

As to claim 68, Everett discloses various forms of the absorbent article, see page 6, lines 16-25 directed toward an intended use of the article.

6. Claims 43, 65, 69-70, 72-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everett in view of Osborn, III.

As to claims 43 and 65, Everett discloses an absorbent garment comprising: a chassis defining a waist opening and first and second leg openings: the chassis including a liquid-permeable body side liner, an absorbent assembly, and a substantially liquid-impermeable outer cover layer (page 15, lines 9-18). Everett discloses an absorbent material comprising,: an upper layer 48 including pulp fluff and superabsorbent material and a lower layer 50 including pulp fluff and superabsorbent material (page 20, line 26 through page 21, line 24); wherein the absorbent material has a thickness in a range of between 0.5 and 7.5 mm (page 13, lines 9-12), and an absorbent capacity between about 14 and 40 grams w/v% saline solution per gram of absorbent material (page 23, lines 11-19), and the lower layer has a greater density than the upper layer (page 21, lines 10-24; page 78, line 6-9 and page 80, lines 3-5).

The limitations of the upper layer being drum -formed and the lower layer being air laid are directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

Everett does not disclose the lower layer comprises a plurality of separate pieces placed in desired location of the absorbent assembly. Osborn discloses an absorbent product with a segmented absorbent core for the benefit of providing independent segments each able to move in the Z-direction without constraints and takes into account the front-to-back differences in the shape of the body of the wearer and thus allows a more accurate and comfortable fit (Osborn, Abstract and col. 2, lines 13-20). One of ordinary skill in the art would be motivated by the teachings of Osborn to modify the lower layer to have a segmented core for the benefits taught in Osborn. As to the limitation of a continuous length of the upper layer, applicant has not given any guidance or definition in the specification or claims of the term "continuous" that distinguishes the amended claims over the prior art of record. Specifically, "continuous length", given the broadest interpretation can mean any length of the layer between two points. Therefore, without any clarification of the term "continuous length", this term is

considered to be synonymous with "length" and the amendment does not change the scope of the claims.

As to claim 69, Everett discloses an upper layer of density 0.03 gcm^3 - .4 g/cm^3 (page 78, lines 7-8). Everett discloses the lower layer has a density of not less than about 0.1g/cm^3 and not more than about 0.3 g/cm^3 (page 80, lines 3-4).

As to claim 70, Everett discloses the upper layer comprises between 20 and 75wt%, which includes the range of between 20 and 70% superabsorbent (page 78, lines 15-16). Everett discloses the upper layer comprises between 20 and 75wt%, which includes a component of the range of between 10 and 80% superabsorbent (page 78, lines 15-16).

As to claim 72, see page 13, lines 9-12.

As to claim 73, Everett discloses the absorbent material has an absorbent capacity of at least 16 grams 0.9 w/v% saline solution per gram of absorbent material (page 23, lines 11-19).

As to claim 74, Everett discloses two or more layers (page 25, lines 34-35.

As to claims 75 and 76, the limitations of the upper layer being drum -formed and the lower layer being air laid are directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

As to claims 77, Everett discloses a plurality of layers on the upper layer (page 79, claim 12).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Primary Examiner
Art Unit 3761

June 12, 2006